

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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4 MARVIN ALBERTO VIVAS-MORALES,)
5 Plaintiff,)
6 vs.) Civil Action
7 UNITED STATES OF AMERICA,) No. 03-312 (Erie)
8 Defendant.)
9

10 STATEMENT OF COUNSEL

11 Friday, January 28, 2005
12
13

14 The Statement of Counsel, taken before me, the
15 undersigned, Melissa L. Fenster, a Notary Public in and for
16 the Commonwealth of Pennsylvania, at the offices of the
17 United States Attorney's Office, 700 Grant Street, Suite 400,
18 Pittsburgh, Pennsylvania, 15219, commencing at
19 2:01 o'clock p.m., the day and date above set forth.
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25
COMPUTER-AIDED TRANSCRIPTION BY
MORSE, GANTVERG & HODGE, INC.
PITTSBURGH, PENNSYLVANIA
412-281-0189

ORIGINAL

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 (No appearance.)

4 On behalf of the Defendant:

5 Rebecca Haywood, Esquire
6 Assistant United States Attorneys
7 United States Attorney's Office
700 Grant Street, Suite 400
Pittsburgh, Pennsylvania 15219

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P-R-O-C-E-E-D-I-N-G-S

MS. HAYWOOD: I am Rebecca Haywood. I am an Assistant United States Attorney, and I am representing the Defendant, United States of America, in Civil Action 03-312 (Erie), which is a federal lawsuit under the Federal Tort Claims Act that has been filed by Marvin Alberto Vivas-Morales.

On January 14, 2005, I sent Mr. Vivas-Morales a Notice of Deposition requiring him to appear at 1:30 at the United States Attorney's Office in Pittsburgh, Pennsylvania.

I note that Mr. Morales was released from federal custody on July 6, 2004. As of this date, he has failed to provide the Court or counsel for the Defendant, myself, with a forwarding address.

However, when I sent interrogatories to him at the federal prison where he had previously been incarcerated, I received the interrogatories returned with the forwarding address that Mr. Vivas-Morales had left with the prison.

I therefore sent the Notice of Deposition to that forwarding address, and that Notice has not been returned to me as of that date.

I had wanted to put on the record that despite this Notice Mr. Vivas-Morales has failed to appear today for this deposition. We have waited until two o'clock to put this on the record.

- - -

(Thereupon, at 2:02 o'clock p.m., the Statement of
Counsel was concluded.)

- - -

CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA,)
COUNTY OF ALLEGHENY.) Civil Action No. 03-312 (Erie)

I, Melissa L. Fenster, do hereby certify that the foregoing Statement of Counsel was by me reduced to stenotypy, and afterwards transcribed by means of computer-aided transcription.

I do further certify that this Statement of Counsel was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Pittsburgh, Pennsylvania, on this 7th day of February, 2005.


Melissa L. Fenster
Notary Public

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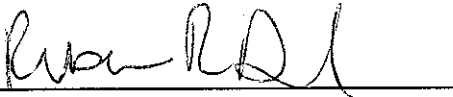
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CERTIFICATE OF SERVICE

This is to certify that on this 10th day of February, 2005,
a copy of the foregoing Motion was served via certified and first
class United States Mail, postage prepaid, on:

Marvin Alberto Vivas-Morales
3000 Sidney Street
Pittsburgh, PA 15203



Rebecca R. Haywood
Assistant U.S. Attorney